



California Regulatory Notice Register

REGISTER 2006, NO. 27-Z

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JULY 07, 2006

PROPOSED ACTION ON REGULATIONS

TITLE 03. DEPARTMENT OF FOOD AND AGRICULTURE

Diaprepes Root Weevil Interior Quarantine — Notice File No. Z06-0627-05 877

TITLE 05. SUPERINTENDENT OF PUBLIC INSTRUCTION

Child Care and Development Services — Notice File No. Z06-0626-01 878

TITLE 08. DIVISION OF WORKERS' COMPENSATION

Medical Treatment Utilization Schedule — Notice File No. Z06-0626-02 881

TITLE 10. DEPARTMENT OF INSURANCE

Bail Education — Notice File No. Z06-0627-01 887

TITLE 10. DEPARTMENT OF INSURANCE

Self-Service Storage Agent License — Notice File No. Z06-0627-03 891

TITLE 14. FISH AND GAME COMMISSION

Commercial Herring Fishery — Notice File No. Z06-0627-06 893

TITLE 14. FISH AND GAME COMMISSION

Marine Reserves — Notice File No. Z06-0627-07 896

TITLE 14. FISH AND GAME COMMISSION

Waterfowl Hunting — Notice File No. Z06-0627-08 903

TITLE 14. SAN FRANCISCO BAY CONSERVATION & DEVELOPMENT COMMISSION

BCDC CSQA Certified Regulation Program — Notice File No. Z06-0627-13 906

TITLE 15. CORRECTIONS STANDARDS AUTHORITY

Minimum Standards for Juvenile Facilities — Notice File No. Z06-0627-12 908

TITLE 16. BUREAU OF AUTOMOTIVE REPAIRS

Disciplinary Guidelines — Notice File No. Z06-0626-03 913

(Continued on next page)

***Time-
Dated
Material***

GENERAL PUBLIC INTEREST

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Prospective Contractors are Ineligible to Enter into State Contracts 916

DEPARTMENT OF FISH AND GAME
CESA Consistency Determination for Aubell Property Joint Maintenance Project, Del Norte County 917

DEPARTMENT OF FISH AND GAME
CESA Consistency Determination for Ten Mile River Bridge Replacement Project, Mendocino County 917

DEPARTMENT OF FISH AND GAME
CESA Consistency Determination for Relocation of U.S. Highway 101 at Confusion Hill, South Fork Eel River on U.S. Highway 101 at Post Miles 98.8 and 100.8 in Mendocino County 917

DEPARTMENT OF HEALTH SERVICES
Quality Assurance Fee on Skilled Nursing Facilities for the 2006–07 Rate Year 919

RULEMAKING PETITION DECISIONS

DEPARTMENT OF HEALTH SERVICES
Regarding Petitioner Mark N. Todzo 919

PUBLIC EMPLOYEES’ RETIREMENT SYSTEM
Decision on Request for Reconsideration of Denial of Petition 920

SUMMARY OF REGULATORY ACTIONS

Regulations filed with the Secretary of State 921

Sections Filed, January 25, 2006 to June 28, 2006 923

The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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DEPARTMENT OF HEALTH SERVICES

NOTICE OF GENERAL PUBLIC INTEREST

THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES QUALITY ASSURANCE FEE ON SKILLED NURSING FACILITIES FOR THE 2006–07 RATE YEAR

This notice provides updated information concerning the Quality Assurance (QA) Fee on each skilled nursing facility for the rate year August 1, 2006 to July 31, 2007. California Health and Safety Code sections 1324.20 through 1324.30, and Welfare and Institutions Code section 14105.06, authorize the California Department of Health Services (CDHS) to collect a QA Fee from all non-exempt Freestanding Skilled Nursing Facilities and Freestanding Skilled Adult Subacute Nursing Facility Level–Bs (FS/NF–Bs). The purpose of this fee is to enhance federal financial participation in the Medi-Cal program, provide additional reimbursement to, and to support quality improvement efforts in licensed FS/NFBs providing services for the Medi-Cal program.

QA FEE IMPOSED FOR THE 2006–07 RATE YEAR

Effective on August 1, 2006, for the rate year 2006–2007, CDHS will begin collecting the six (6) percent QA Fee authorized by the legislature on the total net revenue of all FS/NF–Bs, subject to the fee. CDHS will collect the following QA Fee on a monthly basis:

FS/NF–Bs with **100,000 or more** total annual resident days — \$6.81, per resident day.

FS/NF–Bs with **less than 100,000** total annual resident days — \$7.79, per resident day.

CDHS will send quarterly notices to each facility with three (3) monthly payment forms. Payments are due on or before the last day of the month following the month for which the fee is imposed.

PUBLIC REVIEW AND COMMENTS

A copy of the California Health and Safety Code sections 1324.20 through 1324.30, and Welfare and Institutions Code section 14105.06 may be requested from, and any comments may be sent to:

Cecilia Keiser, Acting Chief
Long Term Care System Development Unit
Rate Development Branch
Department of Health Services
1501 Capitol Avenue, Suite 71.4001
MS 4612
P.O. Box 997417
Sacramento, CA 95899–7417.

RULEMAKING PETITION DECISIONS

DEPARTMENT OF HEALTH SERVICES

June 21, 2006

Mr. Mark N. Todzo
Lexington Law Group, LLP
1627 Irving Street
San Francisco, CA 94122

Re: Petition for Regulations

Dear Mr. Todzo:

The Petition you filed on May 17, 2006, pursuant to Government Code section 11340.6 has been carefully reviewed by the Department of Health Services (Department).

Your petition included requests that the Department, within ten days of the date of your petition,

- (1) issue proposed regulations pursuant to Section 1276.65 of the Health and Safety Code (HSC) that comply with that statute;
- (2) rescind the policy issued on November 8, 2005, regarding the computation of nursing hours per patient day in nursing homes;
- (3) issue proposed regulations pursuant to Section 1426 of the HSC; and
- (4) provide you with documentation sufficient to demonstrate the Department's compliance with these requests.

The Department has given consideration to your Petition in accordance with Government Code section 11340.7 and has determined to grant (1), except for the portion of the request that the regulations be issued within ten days of your request, and to deny (2), (3), and (4).

Regarding (1), the regulations are already being developed and will be promulgated in accordance with the Administrative Procedure Act. With respect to request (2), when the Department issues the above-referenced proposed regulations in accordance with HSC 1276.65,

this issue will be addressed. Regarding request (3), HSC section 1426 only requires specific acts to be included in regulation if feasible. The Department has determined that listing specific acts in regulation is not feasible, and does not intend to issue such regulations.

Request (4) is denied because some of the requests are being denied and all are being denied within the ten-day time frame you specified. The Department will, however, place your name on the list of interested parties who are to receive the Notice of Proposed Rulemaking.

In conclusion, it is the Department's decision to grant, in part, and to deny, in part, your Petition for update of regulations as stated above. You should be aware that pursuant to Government Code section 11340.7(c), you, or any other interested person, may request reconsideration of any part or all of the Department's decision regarding this Petition no later than 60 days after the date of this letter.

A copy of this letter will be sent to the Office of Administrative Law for publication in the California Regulatory Notice Register, pursuant to Government Code section 11340.7(d).

If you, or any other interested person, would like copies of the Petition or wish to discuss this matter further, please contact Barbara Dayvault, Senior Counsel, at (916) 440-7820.

Thank you for bringing this matter to our attention.

Sincerely,

/s/

Robert D. Tousig
Deputy Director and Chief Counsel

cc:

Chuck Smith, Chief
Office of Regulations
Department of Health Services
P.O. Box 997413, MS 0015
Sacramento, CA 95899-7413

Brenda Klutz, Deputy Director
Licensing and Certification
Department of Health Services
P.O. Box 997416, MS 3000
Sacramento, CA 95899-7413

Barbara Dayvault, Senior Staff Counsel
Office of Legal Services
Department of Health Services
P.O. Box 997413, MS 0010
Sacramento, CA 95899-7413

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Board of Administration California Public Employees' Retirement System

Decision on Request for Reconsideration of Denial of Petition California Government Code Section 11340.7

INTRODUCTION

On March 1, 2006, Mr. James McRitchie filed, under Government Code section 11340.6, a petition to the Board of Administration of the California Public Employees' Retirement System (CalPERS). The petition requested that CalPERS amend California Code of Regulations, title 2, sections 554 and 554.6. On March 29, 2006, CalPERS denied Mr. McRitchie's petition, as published in the April 14, 2006 California Regulatory Notice Register, pages 474-475. If adopted, the proposed amendments would make these changes:

1. Section 554¹ currently prohibits CalPERS staff "directly involved in conducting a CalPERS election" from using his/her official position to favor one candidate over another. The proposed amendment would delete the phrase "directly involved in conducting a CalPERS election."
2. Section 554.6 currently provides for a runoff election process when no candidate receives 50% plus one vote as a result of the initial CalPERS election. The proposed amendment would provide for "instant runoff" voting.

On May 26, 2006, Mr. McRitchie submitted, under Government Code section 11340.7(c), a request for reconsideration of the denial of his March 1, 2006 petition. In this request, Mr. McRitchie asserts the amendments are necessary because:

1. Section 554 is in conflict with Government Code section 19990 and therefore in violation of Government Code section 11342.2.
2. Use of the "instant runoff" method of voting in board elections will assure board members will be elected by the greatest possible majority of CalPERS members using a single ballot.

After carefully considering the request for reconsideration of CalPERS' denial of the petition to amend sections 554 and 554.6, for the reasons set forth below, CalPERS hereby affirms its denial of the petition for amendment of regulations dated March 1, 2006.

¹ All further section references are to sections in the California Code of Regulations, title 2, unless otherwise indicated.